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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DANIEL O. LOPEZ,

Plaintiff and Appellant,

v.

PACIFIC SHIP CO., et al.,

Defendants and Respondents.

D044127

(Super. Ct. No. GIC820502)

APPEAL from a judgment of the Superior Court of San Diego County, Ronald L. Styn, Judge. Affirmed.

Daniel O. Lopez sued Pacific Ship Repair & Fabrication, Inc. (erroneously sued as Pacific Ship Co.), Arturo Solis (erroneously sued as Art Solis), Hugo Faris and Armando Corrales (collectively Employers) for compensatory and punitive damages arising from a pedestrian/vehicle accident that occurred on February 2, 2001. In a complaint filed on October 17, 2003, Lopez alleged that the accident was proximately caused by Employers'

negligence and violation of company policy in allowing Lopez to drink tequila on the job and drive off company property in his car while drunk.

Employers demurred and moved to strike the prayer for punitive damages. The trial court sustained Employers' demurrer without leave to amend on the ground that the action was time-barred as a matter of law.

Lopez appeals from judgment entered in favor of Employers, contending the trial court erred in ruling this action was governed by the statute of limitations set forth in Code of Civil Procedure¹ former section 340, subdivision (3) rather than section 340.3. For reasons explained in this opinion, we affirm the judgment.

DISCUSSION

Lopez admits he has filed a complaint for negligence. Yet he seeks to invoke the 10-year statute of limitations codified in section 340.3. That statute applies when a plaintiff seeks damages caused by the defendant's commission of a felony offense for which the defendant has been convicted. (§ 340.3, subd. (a).) Lopez's complaint does not allege that Employers committed, much less were convicted of, a felony offense. Therefore, section 340.3 has no application in this case.

It is possible that Lopez believes he is entitled to the benefit of the 10-year statute of limitations because *he* has been convicted of a felony as a result of the accident. He does not allege that fact, but it appears from the face of his complaint that he is confined

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

in Imperial, California, as prisoner number T-26501. If this is the basis upon which Lopez invokes section 340.3, he is mistaken. The persons injured in the accident would have 10 years within which to file an action against Lopez for damages they suffered as a result of the accident. But the statute does not apply where the *plaintiff* is the convicted felon. (See *Guardian North Bay, Inc. v. Superior Court* (2001) 94 Cal.App.4th 963, 966.)

The statute of limitations applicable to this case is the one governing negligence causes of action. On February 2, 2001, when the accident which is the subject of Lopez's complaint allegedly occurred, the statute of limitations for negligence was one year. (Former § 340, subd. (3); see *Krupnick v. Duke Energy Morro Bay* (2004) 115 Cal.App.4th 1026, 1028.)² Thus, Lopez's action was time-barred after February 2, 2002. As we have noted, Lopez did not file his complaint until October 17, 2003, more than one year and eight months after the statute ran. Lopez makes no attempt to suggest he could amend his complaint to avoid the time bar. Accordingly, the trial court properly granted Employers' demurrer without leave to amend. (See *Ross v. Creel Printing & Publishing Co.* (2002) 100 Cal.App.4th 736, 749; cf. *Barnes v. Wilson* (1974) 40 Cal.App.3d 199, 203.)

² The statute of limitations for personal injury changed to two years on January 1, 2003. (§ 340, subd. (c).) The new statute is not retroactive except for victims of the September 11, 2001 terrorist attacks. (§ 335.1.) It would not assist Lopez in any event, since he did not file this action until two years and eight months after the accident that is the subject of his complaint.

DISPOSITION

For the foregoing reasons, the judgment is affirmed.

IRION, J.

WE CONCUR:

NARES, Acting P. J.

AARON, J.